MEMORANDUM

TO:	Judiciary Committee
FROM:	Attorney Sheila N. Hayre
ON BEHALF OF:	New Haven Legal Assistance Association, Inc.
RE:	S.B. 1155 AN ACT CONCERNING REVISIONS TO STATUTES RELATING TO DISSOLUTION OF MARRIAGE, LEGAL SEPARATION AND ANNULMENT.

Recommended Committee Action:	REJECT THE BILL

Although we support a few of the changes enacted by S.B. 1155, we oppose the bill overall because it offers a hodgepodge of ill-conceived amendments and creates out of thin air an alimony formula that ignores all statutory criteria except income.

As to specific amendments, we find unobjectionable S.B. 1155's gender-neutral language in Section 1 and the consideration of tax consequences in Section 4(d). On the other hand, the bill's singling out of alimony awards of indefinite duration in Section 5(b) is unjustified: if drafters believe judges should specify the factors relied upon in making one type of alimony award, then judges should be required to do so when making every award. Further, Section 2(b)'s prohibition on revising alimony awards at the time a legal separation decree converts to a dissolution simply does not make sense, especially when one considers that years may have elapsed between the date of the initial legal separation and subsequent divorce, and when one contemplates how much the parties' financial circumstances may have changed in the intervening years.

The bill's proposed alimony formula, however, poses the greatest danger to our clients. S.B. 1155 presumably arises out of concerns about unpredictability and inconsistency under the existing statutory regime. Critics of the current regime cry foul and cite, for example, divorces that involved marriages of similar length and with similar incomes but that resulted in vastly different alimony awards. These critics fundamentally misapprehend the way the current system works and should work. A closer examination of these cases usually reveals that the judge relied on one or more of the other statutory criteria in fashioning the award, a reliance which justifies the variation.

As an example, I have a few foreign-born female clients who meet and fall in love with U.S. citizens traveling abroad. They decide to marry, and the client gives up her job, sells her apartment, says goodbye to her family at home, and moves to this country with her new husband. After she arrives in the U.S., her husband begins to abuse her physically, emotionally, and sexually and eventually withdraws the immigration application he filed on her behalf so that she cannot legally work. She slowly discovers that he lied to her about practically everything: he is much older than he said he was; he is divorced with children; he doesn't have a steady well-paying job which would pay for her English classes and college degree; he doesn't own a home but instead rents a small apartment where the couple lives; he controls everything in her life, including her social interactions, her finances, even contact with her family back home. These marriages are often quite short-lived, but the alimony awards can and should be high, appropriately reflecting the significant

long-term financial, emotional, and physical harm such marriages can inflict.

Because S.B. 1155 swings the pendulum too far in the other direction, it is not the solution for those who want to limit judicial discretion or who simply want fewer statutory factors. S.B. 1155 replaces judicial discretion with a mechanical—yet arbitrary and untested—formula that allows consideration of gross income only, to the exclusion of all other factors. Notably, while this simple formula dictates the amount of the alimony award, it offers no guidance as to the order's duration—a failing which undermines any predictability or consistency the formula might have offered. The formula's focus on one single factor—and, for example, not also on "earning capacity"—allows parties to strategically alter their income in order to influence the alimony award, to an extent not possible under the current regime. Finally, the fact that the formula is non-mandatory does not mitigate these harms: the alimony amounts dictated by the formula will inevitably become the starting point for all negotiations about alimony.

We agree with the proponents of this bill that our judges sometimes get it wrong. But, in our experience, our judges—even those who are most fallible—generally get it right. In our cases where alimony is contested and the issue goes to trial, the judge becomes remarkably fluent with the case, having spent a day or two (and sometimes even three or four) hearing the parties testify and listening carefully to the evidence from each side. The alimony awards we see are, on the whole, fair. We therefore think it unwise to undermine judicial discretion in favor of instituting S.B. 1155's arbitrary, mechanical, and wholly untested formula.

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